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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| In the Matter of | ) | |
| | ) | |
| Implementation of the | ) | |
| Telecommunications Act of 1996: | ) | CC Docket No. 96-115 |
| | ) | |
| Telecommunications Carriers' Use | ) | |
| of Customer Proprietary Network | ) | |
| Information and Other Customer | ) | |
| Information | ) | |

# REPLY COMMENTS OF AMERITECH

Ameritech submits this reply to comments on the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

## I.

In the FNPRM, the Commission first sought comment on the issue of whether §222 should be interpreted to permit customers to restrict all marketing use of CPNI.[2] On this issue, Ameritech agrees with the vast majority of commenting parties that that would be a gross overreading of the statute.[3] The language of §222(c) indicates that Congress expected carriers to

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[1] *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-227 (released February 26, 1998) ("FNPRM").

[2] *Id.* at ¶205.

[3] See, e.g., Intermedia, Sprint PCS, Vanguard Cellular, AT&T, MCI, Sprint, Bell Atlantic, BellSouth, GTE, Southwestern Bell, US West, and USTA.

be able to use CPNI for some purposes without customer consent. There is nothing in the statute that would indicate an intent that customers should be able to prohibit a use that is permitted under §222(c) without customer consent.

Moreover, Ameritech suggests that, with increasing competition in the provision of telecommunications services, the furtherance of customers' privacy interests may well be a matter on which the carriers themselves will compete. Clearly, as competition proliferates, competition on the basis of price alone will become less likely as all prices are driven toward economic cost. Customer service and attentiveness to customers' needs and desires -- including any customer preferences with respect to marketing -- will likely be elements of competitive strategies for individual carriers.

In this light, the Commission should not find that §222 requires that customers be permitted to block all marketing by carriers -- even marketing that is otherwise permitted by §222(c).

**II.**

The second issue on which the Commission sought comment is whether any safeguards are needed to protect the confidentiality of carrier information, "including that of resellers and information service providers."[4]

First, Ameritech agrees with the comments of several parties who find no merit in the Commission's inclusion of information service providers ("ISPs") in the category of "other carriers" whose proprietary information is specially protected. Heretofore, the Commission has

[4] FNPRM at ¶¶203-207.

insisted that ISPs are not, solely in their role as information service providers, carriers.[5] The Commission has just recently reiterated this view in its recent report to Congress in its universal service docket.[6] As the Commission noted in its own press release:

> The Commission concluded, as it had in its Universal Service Order, that the categories of "telecommunications service" and "information service" in the 1996 Act are mutually exclusive and consistent with preexisting definitions. The Commission found generally that Congress intended to maintain a regime in which information service providers are not subject to regulation as common carriers merely because they provide their services via telecommunications. The Commission also reaffirmed that information service providers are not subject to universal service obligations, the access charges paid by long distance providers, or rate regulation.

In this light, it can hardly be said that information service providers are included in the term "carrier" for the purpose of §222.

Second, Ameritech opposes Intermedia's request that the Commission require "a bright line separation between ILEC retail operations, wholesale operations, and their presubscription operations."[7] While it is true that, generally speaking, Ameritech's wholesale operations and its retail operations maintain separate systems, nonetheless, it is necessary that Ameritech retail personnel -- especially service representatives -- have access to certain information that carriers may consider sensitive. For example, for customer service purposes, Ameritech retail service representatives must have access to customer PIC information as well as to any IXC billing information appearing on customers' bills. Otherwise, customers would have to call different numbers for billing inquiries that involved questions about both the local and the long distance

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[5] See, USTA at 4-5, GTE at 5, BellSouth at 4-5.

[6] *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45 (Report to Congress) (released April 10, 1998).

[7] Intermedia at 8.

portions of the customer's bill.

However, Ameritech retail marketing personnel do not have access to information concerning the telecommunication services purchased from Ameritech by resellers, CLECs, or IXCs. Nonetheless, the Commission should refuse to mandate Intermedia's "bright line" separation. The statute itself clearly prohibits inappropriate use of such information. Moreover, the Commission has already noted the disadvantages of a mechanical blocking system and, therefore, should be hesitant to impose such an obligation where the statutory requirements are already clear.[8]

With respect to customer billing information that one carrier obtains from another in order to bill the second carrier's services, Ameritech strongly agrees with MCI that such:

> [c]arrier proprietary information is typically protected by contractual provisions . . . Nothing in Section 222 appears to limit carriers' abilities to voluntarily provide greater, or accept less, protection for such information pursuant to contract than that afforded by Section 222(a) and (b).[9]

Thus, the enforcement mechanism (liability under §201(b))that MCI claims is "necessary, for example, to protect information that one carrier provides another for the purpose of billing"[10] is, in reality, unnecessary since the carriers are likely to have agreed to some form of protection for confidential information. Because billing and collection services are neither "bottleneck" services nor common carrier services [11] and because carriers are free to contract regarding terms

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[8] FNPRM at ¶¶195-197.

[9] MCI at note 6.

[10] MCI at 14.

[11] *See, In the Matter of Detariffing of Billing and Collection Services,* CC Docket No. 85-88, Report and Order, FCC 86-31 (released January 29, 1986) ("Billing and Collection Order").

and conditions -- including protection of proprietary information -- the Commission should be very hesitant to articulate rules that would afford either more or less protection than carriers have already contractually agreed to.

In particular, Ameritech disagrees with MCI's claim that the Commission should go about creating a new "rebuttable presumption" in any case involving allegedly confidential information.[12] There is nothing in the statute that would indicate any congressional intent that the rules of evidence or the burden of proof or burden of "coming forward" with evidence should be changed in any way -- certainly not on the simple claim of the allegedly aggrieved carrier. Moreover, with respect to that request of MCI, it is clear that any carrier liability under §201(b) of the Communications Act could not attach to actions that are related to the use of information that is either carrier billing information or otherwise not CPNI.[13] That is simply because §201, by its terms, is limited to common carrier activity. And, as noted above, the provision of billing and collection services does not constitute such an activity.

Further, such carrier billing information would be end user CPNI in the hands of the carrier contracting for billing and collection services. As such, it is subject to mandatory disclosure by that carrier if the customer makes a request in writing.[14] Given that fact, it is clear that the carrier providing the billing and collection services should be able to have access to that

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[12] MCI at 13.

[13] Carrier billing information is not CPNI of the carrier contracting for billing and collection services since those services are not telecommunications services. See Billing and Collection Order.

[14] Section 222(c)(2).

information for marketing purposes if the end user customer authorizes that access.[15] Clearly, no carrier can claim that information contained in its bills to its customers is so proprietary that it would not have to disclose that information to another carrier if the customer authorized it. That being the case, it would be inconsistent with the requirements of the statute for the Commission to conclude that §222(a) or (b) would preclude a carrier's use of billing information in its possession even if the end user customer authorized that use.

Sprint grudgingly concedes that it would have to turn over such information to a carrier that obtained customer authorization.[16] However, Sprint claims that it would turn over the "raw billing information." The statute, however, defines CPNI to include "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier".[17] Thus, if the end user customer authorized it, Sprint would have an obligation to turn over the exact information appearing on the customer's bill -- not any hypothetical "raw data".

With respect to PIC information, Ameritech would agree that a list of a carrier's PIC'ed customers would be proprietary information to that carrier[18] and that it would be inappropriate to use that information for target marketing to customers of certain IXCs. However, assuming any necessary prerequisites have been met and assuming appropriate customer authorization for "out-of-bucket" marketing, LECs should be able to market their own or their affiliates' long distance

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[15] Obtaining such authorization would have to be done in a way that did not violate the confidentiality provisions of the carriers' billing agreement.

[16] Sprint at 7-8.

[17] Section 222(f)(1)(B).

[18] MCI at 11.

services to any of their local exchange customers who are PIC'ed to any other long distance carrier. By way of example, the fact that Customer A is PIC'ed to AT&T long distance services may be proprietary information to AT&T; however, the fact that Customer A is not PIC'ed to the long distance services of the LEC or the LEC's affiliate is not.

Finally, with respect to the "win back" issue discussed by MCI,[19] while the Commission has made it clear that CPNI cannot be used for such marketing efforts, it should be clear as well that the fact that a customer has ceased to be a customer of Carrier A, for example, is not itself CPNI. In other words, Carrier A should be able to use the fact that a customer terminated service -- even the fact that the customer terminated service in favor of another albeit unidentified carrier -- as a trigger to call the customer to attempt to win the customer back. While the identity of the new carrier may be information that is confidential to that carrier, the fact that the customer has chosen to leave his/her old carrier is not. Such win back efforts are, in fact, pro-competitive. They stimulate better customer service, more price competition, and provide carriers with valuable feedback on how to be more responsive to customer needs.

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[MSP0118.doc]

[19] MCI at 15-16.

CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Reply Comments of Ameritech has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 14th day of April, 1998.

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